rier's tracks. Swift & Co. held their own cars under lading on this siding over forty-eight hours, and refused to pay the demurrage charge. This action was brought by the railway company to recover these charges. *Held*, that the plaintiff recover. *Swift & Co.* v. *Hocking Valley Ry. Co.*, U. S. Sup. Ct., Oct. Term, 1916, No. 376.

For a discussion of the case, see NOTES, p. 756.

LANDLORD AND TENANT — SURRENDER BY OPERATION OF LAW — WHETHER TENANT CAN RECOVER AN EXCESS OVER RENT RESERVED RECEIVED BY LANDLORD. — A clause in a lease provided that, if the premises should become vacant, the lessor was authorized to enter, re-rent the land, and apply the proceeds to the rent due from the lessee. The lessee vacated the premises and stopped paying rent. He offered to surrender to the lessor; but the latter would not accept. The lessor leased the premises for a greater amount than the original rent. The lessee seeks to recover the excess. *Held*, that he may not recover. *Whitcomb* v. *Brant*, N. J. Ct. Err. & App. (not yet reported).

A surrender of an estate puts an end to the tenant's liability on the lease, unless by an express contract the tenant has made himself liable. *Richardson* v. *Gordon*, 188 Mass. 279, 74 N. E. 344. See 1 TIFFANY, LANDLORD AND TENANT, 1179. Where the consent of both landlord and tenant cannot be implied there can be no surrender by operation of law. *Auer* v. *Penn*, 99 Pa. St. 370; *Brown* v. *Cairns*, 63 Kan. 584, 66 Pac. 639. But the court in the principal case conceives that the abandonment of the premises and failure to pay rent terminated the privity of estate, and that the lessee, being in default, cannot recover in quasi-contract. But privity of estate is not terminated merely by breach of covenant; in fact, the landlord has no power thereupon to evict a tenant unless a provision giving him such a right is inserted in the lease. *Vanatta* v. *Brewer*, 32 N. J. Eq. 268; *De Lancey* v. *Ganong*, 9 N. Y. 9. In the principal case the landlord expressly refused to exercise such a right. It must appear, therefore, that the lessee is still owner of the leasehold estate, and that the lessor, having collected the proceeds under an authorization by the lessee, is bound to account to him for them. 2 TIFFANY, LANDLORD AND TENANT, 1341.

LEGACIES AND DEVISES — PAYMENT — INTEREST BY WAY OF MAINTENANCE. — A widow bequeathed her leasehold residence to her daughter, contingent, however, upon the daughter's marrying or reaching twenty-one. At the death of the testatrix the daughter was an infant. She had not been receiving support from her mother. The question arises to whom the rents and profits of the residence belong until the daughter attains twenty-one or marries. *Held*, that the residuary legatees are entitled as against the daughter. *In re Eyre*, 142 L. T. 280.

A general legacy, contingent or vested, payable at a future date carries interest, not from the death of the testator but only from the time it is payable. *Heath* v. *Perry*, 3 Atk. 101. On the other hand, a specific legacy, if vested, carries interest from the death of the testator, even though the enjoyment of the principal is expressly postponed. See 2 ROPER, LEGACIES, 4 ed., 1250. A contingent specific legacy, however, does not bear interest until the happening of the contingency. See 2 WILLIAMS, EXECUTORS, 10 ed., 1170. An exception to this rule as to contingent specific legacies and general legacies arises on bequests from a parent to an infant child, in which cases the courts usually allow the child interest in the interim by way of maintenance. The basis of this exception is commonly said to be a rule of presumed intention of the testator — the court "will not presume the father . . . so unnatural as to leave a child destitute" meanwhile. *Incledon* v. *Northcote*, 3 Atk. 430, 438. In accordance with this view of presumed intention no gift of income will be implied where

there is a separate provision for maintenance. *Wynch* v. *Wynch*, 1 Cox Ch. 433. In some cases, however, the exception has the earmarks of a flat rule of policy regardless of expressed intention, a policy in favor of the child being supported. Thus, when the testator directed the interest to be accumulated until the legatee reached twenty-one, one court, nevertheless, implied a gift of income for maintenance. *Mole* v. *Mole*, 1 Dick. Rep. 310. But whatever the scope of the exception, the principal case seems clearly not to fall within it; for the fact that the child had not been dependent upon the mother for support precludes the necessity or probable intention of a gift of the intermediate income.

LIMITATION OF ACTIONS — ACCRUAL OF ACTION — CONSTRUCTION OF STOCKHOLDERS' LIABILITY STATUTE. — A Minnesota statute provides that on petition by the receiver of an insolvent corporation the court may levy assessments upon stockholders if the corporate assets are shown to be insufficient to discharge the corporate indebtedness. GEN. STAT. 1913, § 6645 *et seq.* In 1907 a corporation was declared insolvent and a receiver appointed. In 1915 the receiver petitioned for a hearing and obtained an assessment. Later the same year he sues a stockholder upon the assessment, and is met with a defence of the six year Statute of Limitations. *Held*, the action is barred by the Statute of Limitations. *Shearer* v. *Christy*, 161 N. W. 498 (Minn.).

The general principle seems clear that the Statute of Limitations does not begin to run upon a claim until suit may be brought to enforce it. *Staninger* v. *Tabor*, 103 Ill. App. 330; *In re Hanlin's Estate*, 133 Wis. 140, 113 N. W. 411. Where some condition beyond the control of the plaintiff must first be satisfied, the statute does not run until such condition is fulfilled. *Harriman* v. *Wilkins*, 20 Me. 93. See 1 WOOD, LIMITATIONS, 4 ed., § 122 a. But where the preliminary act or condition precedent to direct prosecution of the claim is within the plaintiff's control, the statute begins to run as soon as such act may reasonably be accomplished. *Shelburne* v. *Robinson*, 8 Ill. 597; *Williams* v. *Bergin*, 116 Cal. 56, 47 Pac. 877; *Bauserman* v. *Charlott*, 46 Kan. 480, 26 Pac. 1051. *Contra*, *Hildebrand* v. *Kinney*, 172 Ind. 447, 87 N. E. 832. In the principal case the court proceeds upon the basis that the right of action against the stockholder arises as soon as the receiver is appointed. Other courts, however, in construing this Minnesota statute have held that the right of action does not arise until the insufficiency of corporate assets is adjudicated and the assessment is levied by the court. *Bernheimer* v. *Converse*, 206 U. S. 516; *Hale* v. *Cushman*, 96 Me. 148, 51 Atl. 874. Similar provisions in other states have likewise been interpreted as giving rise to a right of action only when the assessment is levied. *Goss* v. *Carter*, 156 Fed. 746; *Mister* v. *Thomas*, 122 Md. 445, 89 Atl. 844; *Shipman* v. *Treadwell*, 208 N. Y. 404, 102 N. E. 634. And statutes making stockholders of insolvent corporations liable on unpaid subscriptions have received a similar construction. *Hawkins* v. *Glenn*, 131 U. S. 319; *Gillin* v. *Sawyer*, 93 Me. 151, 44 Atl. 677. It would seem that neither of these views is desirable. On the one hand, the creditors should be protected; on the other, the stockholder should not have liability hanging over him indefinitely until the receiver may choose to get an assessment levied. It is the policy of the law to wind up insolvent estates speedily in the interest both of the creditor and of the stockholder. Under such a statute the receiver may bring proceedings against the stockholders as soon as the corporate assets have been so marshalled that the propriety of an assessment can be demonstrated to the court with fair certainty. Limitations should, therefore, begin to run as soon as this step might reasonably be accomplished.

MANDAMUS — ACTS SUBJECT TO MANDAMUS — TEMPORARY POSSESSION OF PUBLIC OFFICE PENDING RESULT OF CONTEST. — The defendant, governor